

1 LAURENCE F. PULGRAM (CSB No. 115163)
lpulgram@fenwick.com
2 ALBERT L. SIEBER (CSB No. 233482)
asieber@fenwick.com
3 LIWEN A. MAH (CSB No. 239033)
lmah@fenwick.com
4 FENWICK & WEST LLP
5 555 California Street, 12th Floor
6 San Francisco, CA 94104
Telephone: (415) 875-2300
Facsimile: (415) 281-1350

7 PATRICK E. PREMO (CSB NO. 184915)
ppremo@fenwick.com
8 DENNIS M. FAIGAL (CSB NO. 252829)
dfaigal@fenwick.com
9 FENWICK & WEST LLP
10 Silicon Valley Center
801 California Street
Mountain View, CA 94041
11 Telephone: (650) 988-8500
12 Facsimile: (650) 938-5200

Attorneys for Plaintiff SUCCESSFACTORS, INC.

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION

18 SUCCESSFACTORS, INC., a Delaware
19 corporation,

20 Plaintiff,

21 v.

22 SOFTSCAPE, INC., a Delaware corporation,
23 and DOES 1-10, inclusive,

24 Defendants.

Case No. CV 08 1376 CW

**DECLARATION OF LIWEN MAH IN
SUPPORT OF SUCCESSFACTORS, INC.'S
MOTION FOR ADMINISTRATIVE RELIEF
TO FILE MATERIALS RECENTLY
PRODUCED BY GOOGLE, INC. PURSUANT
TO THE SUBPOENA PREVIOUSLY
AUTHORIZED BY THE COURT AND
MOTION TO SEAL**

Courtroom: 2
Judge: Hon. Claudia Wilken

Date of Filing: March 11, 2008
Trial Date: No date set

27
28 ///

1 I, Liwen Mah, declare as follows:

2 1. I am an associate with the law firm of Fenwick & West LLP, counsel to Plaintiff
3 SuccessFactors, Inc. I am an attorney admitted to practice before this Court. I submit this
4 declaration in support of SuccessFactors' Motion for Administrative Relief to File Materials
5 Recently Produced by Google, Inc. Pursuant to the Subpoena Previously Authorized by the Court
6 and Motion to Seal. I have personal knowledge of the matters set forth herein and, if called upon,
7 could and would testify competently thereto.

8 2. Pursuant to the Court's March 19, 2008 Order, Fenwick & West issued a subpoena
9 on third party Google, Inc. ("Google"). In response, and after Plaintiff filed its Reply in Support
10 of the Preliminary Injunction, Google produced a log showing details about the user "John
11 Anonymous" who created a Google mail account with the address
12 hcmknowledge2008a@gmail.com. Attached as Exhibit A is a true and correct copy of this log
13 and Google's transmittal communications. The times shown are Greenwich Mean Time, which I
14 understand was five hours ahead of Eastern Standard Time on the dates in question. The earliest
15 time in the log corresponds to March 4, 2008 at 9:44 P.M. Eastern Standard Time. The next entry
16 shown in the log is about eighteen minutes later, corresponding to March 4, 2008 at 10:02 P.M.
17 Eastern Standard Time. The last time in the log corresponds to March 12, 2008 at about 5:50 P.M.
18 Eastern Standard Time, the same day that Defendant filed its opposition to Plaintiff's application
19 for a temporary restraining order.

20 3. Google also produced a list of e-mail header information showing transmissions to
21 and from the hcmknowledge2008a@gmail.com account. Attached as Exhibit B is a true and
22 correct copy of the relevant excerpts that show the "bcc:" recipients of e-mails from the
23 hcmknowledge2008a@gmail.com account. Attached as Exhibit C is a CD containing a true and
24 correct copy of the full e-mail header information produced by Google, which includes the
25 information in Exhibit B. Because of the voluminous and repetitive nature of the e-mail headers, I
26 have provided the excerpts in Exhibit B for the convenience of the Court. The e-mail header
27 information includes commercially sensitive and confidential information and non-public,
28 confidential customer information, specifically the e-mail addresses for individual employees of

1 SuccessFactors customers and prospects.

2 4. The log provided by Google (Exhibit A) showed that shortly after the Google mail
3 account was created at around 9:44 P.M. Eastern Standard Time on March 4, 2008, it was still
4 being accessed at around 10:02 P.M. from IP address number 74.94.170.178. Based on the e-mail
5 header information produced by Google (Exhibit B), the transmittal of e-mails with hundreds of
6 “bcc:” recipients occurred between 9:44 P.M. and 10:02 P.M. that night. I used the reverse IP
7 address lookup tool at <http://www.dnsstuff.com/tools> to ascertain identifying information
8 regarding IP address 74.94.170.178. The lookup tool shows that the IP address 74.94.170.178
9 corresponds to a Courtyard Marriott hotel in Waltham, Massachusetts, which I understand to be
10 less than ten miles from Defendant’s headquarters in Wayland, Massachusetts. Attached as
11 Exhibit D is a true and correct copy of the lookup results for IP address 74.94.170.178.

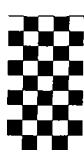
12 5. On March 25 and March 26, 2008, Pat Premo, a partner at Fenwick & West, and I
13 telephoned opposing counsel to seek Defendant’s stipulation to the submission of Google’s
14 production to the Court in advance of the Preliminary Injunction hearing on March 27, 2008.
15 While I understand that Defendant does not oppose the filing of Google’s production to the Court
16 under seal, the parties are still conferring about the proper confidentiality designation for the
17 information in Exhibits B and C.

18 I declare under penalty of perjury under the laws of the United States of America and the
19 State of California that the foregoing is true and correct, and that this declaration was executed
20 this 26th day of March, 2008, in San Francisco, California.

21
22 /s/ Liwen Mah

23 Liwen Mah
24
25
26
27
28

EXHIBIT A



Google Inc.
1600 Amphitheatre Parkway
Mountain View, California 94043

Google

Tel: 650.253.3425
Fax: 650.249.3429
www.google.com

FACSIMILE TRANSMITTAL SHEET

TO:

C. William Craycroft

FROM:

Suzanne Abbott

COMPANY:

Law Offices of C. William Craycroft

DATE:

March 21, 2008

FAX NUMBER:

(408) 279-5845

**TOTAL NO. OF PAGES INCLUDING
COVER: 4**

PHONE NUMBER:

SENDER'S FAX NUMBER

650-249-3429

RE:

Subpoena dated March 19, 2008

SENDER'S TELEPHONE NUMBER:

☐ URGENT

☒ FOR REVIEW

☐ PLEASE COMMENT

☐ PLEASE REPLY

NOTES/COMMENTS:

Subpoena dated March 19, 2008 (Internal Ref. No. 21128)

Google Inc.
1600 Amphitheatre Parkway
Mountain View, California 94043



Tel: 650.253.3425
Fax: 650.249.3429
www.google.com

March 21, 2008

Via Fax
(408) 279-5845

C. William Craycroft
Law Offices of C. William Craycroft
1741 Technology Drive, Suite 200
San Jose, CA 95110

Re: Subpoena dated March 19, 2008 (Internal Ref. No. 63115-21128), *Success Factors, Inc. v. Softscape, Inc.*

Dear William Craycroft:

Pursuant to the Subpoena issued in the above-referenced matter, we have conducted a diligent search for documents and information accessible on Google's systems that are responsive to your request. Our response is made in accordance with state and federal law, including the Electronic Communications Privacy Act. See 18 U.S.C. § 2701 et seq. By this response, Google does not waive any objection to further proceedings in this matter.

We understand that you have requested customer information regarding the user account specified in the Subpoena, which includes the following information: (1) Subscriber and recent login information for the Gmail account hcmknowledge2008a@gmail.com.

Please note that the scope of documents requested in your subpoena exceeds the type of information Google is able to provide regarding user e-mail under the federal Electronic Communications Privacy Act, 18 U.S.C. § 2702-2703 ("ECPA"). As it has been construed by the U.S. Circuit Court of Appeals for the Ninth Circuit in *Theofel v. Alwyn [Farey] - Jones*, 2003 U.S. App. LEXIS 17963 (9th Cir. 2003), the federal ECPA prohibits service providers such as Google from producing the contents of a subscriber's e-mail communications without a search warrant. As you are likely aware, Google is domiciled in the Ninth Circuit and therefore is bound by the *Theofel* decision.

To the extent any document provided herein contains information exceeding the scope of your request, protected from disclosure or otherwise not subject to production, if at all, we have redacted such information or removed such data fields.

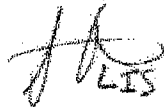
Finally, Google requests reimbursement in the amount of \$125 for reasonable costs incurred in processing your request. Please forward your payment to Google Custodian of Records, at the address above and please write the Internal Reference Number (63115-21128) on your check. The federal tax ID number for Google is 77-0493581.

Google Inc.
1600 Amphitheatre Parkway
Mountain View, California 94043

Google™

Tel: 650.253.3425
Fax: 650.249.3429
www.google.com

Very truly yours,

A handwritten signature in black ink, appearing to read 'SABOTT' with a stylized flourish.

Suzanne Abbott
2008.03.22
11:44:39 -07'00'

Suzanne Abbott
Legal Investigations Support

Enclosures

Subscriber Information

Email hcmknowledge2008a@gmail.com
Status Enabled
Services Talk, Gmail
Name John Anonymous
Secondary email
Created on 05-Mar-2008 02:44:04am GMT
Lang en
IP 203.117.152.104 on 05-Mar-2008 02:44:04am GMT

Logs

All times are displayed in UTC/GMT.

hcmknowledge2008a@gmail.com

Date/Time	IP	Subnet
12-Mar-2008 10:49:54 pm	61.133.87.226	255.255.255.255
05-Mar-2008 03:02:27 am	74.94.170.178	255.255.255.255
05-Mar-2008 02:44:05 am	203.117.152.104	255.255.255.255

EXHIBIT B

1 LAURENCE F. PULGRAM (CSB NO. 115163)
lpulgram@fenwick.com

2 ALBERT L. SIEBER (CSB NO. 233482)
asieber@fenwick.com

3 LIWEN A. MAH (CSB NO. 239033)
lmah@fenwick.com

4 FENWICK & WEST LLP
555 California Street, 12th Floor
5 San Francisco, CA 94104
Telephone: (415) 875-2300
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dfaigal@fenwick.com

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16 OAKLAND DIVISION

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18 SUCCESSFACTORS, INC., a Delaware
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19 Plaintiff,

20 v.

21 SOFTSCAPE, INC., a Delaware
22 corporation; and DOES 1-10, inclusive,

23 Defendants.

Case No. CV 08-1376 CW

MANUAL FILING NOTICE

24
25 **RE: CONFIDENTIAL EXHIBITS B TO THE MOTION FOR ADMINISTRATIVE RELIEF**
26 **TO FILE MATERIALS RECENTLY PRODUCED BY GOOGLE, INC. PURSUANT TO**
27 **THE SUBPOENA PREVIOUSLY AUTHORIZED BY THE COURT; MOTION TO SEAL**
28

This filing is in paper or physical form only, and is being maintained in the case file in the Clerk's office.

If you are a participant on this case, this filing will be served in hard-copy shortly.

For information on retrieving this filing directly from the court, please see the court's main web site at <http://www.cand.uscourts.gov> under Frequently Asked Questions (FAQ).

This filing was not efiled for the following reason(s):

_____ Voluminous Document (PDF file size larger than efile system allowances)

_____ Unable to Scan Documents

_____ Physical Object (description): _____

_____ Non Graphical/Textual Computer File (audio, video, etc.) on CD or other media

 X Item Under Seal

_____ Conformance with the Judicial Conference Privacy Policy (General Order 53).

_____ Other (description): _____

Dated: March 26, 2008

FENWICK & WEST LLP

By: /s/ **Liwen Mah**
 Liwen Mah
 Attorneys for Plaintiff SUCCESSFACTORS, INC.

FENWICK & WEST LLP
 ATTORNEYS AT LAW
 MOUNTAIN VIEW

EXHIBIT C

1 LAURENCE F. PULGRAM (CSB NO. 115163)
lpulgram@fenwick.com

2 ALBERT L. SIEBER (CSB NO. 233482)
asieber@fenwick.com

3 LIWEN A. MAH (CSB NO. 239033)
lmah@fenwick.com

4 FENWICK & WEST LLP
555 California Street, 12th Floor
5 San Francisco, CA 94104
Telephone: (415) 875-2300
6 Facsimile: (415) 281-1350

7 PATRICK E. PREMO (CSB NO. 184915)
ppremo@fenwick.com

8 DENNIS M. FAIGAL (CSB NO. 252829)
dfaigal@fenwick.com

9 FENWICK & WEST LLP
Silicon Valley Center
10 801 California Street
Mountain View, CA 94041
11 Telephone: (650) 988-8500
Facsimile: (650) 938-5200

12 Attorneys for Plaintiff SUCCESSFACTORS, INC.

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16 OAKLAND DIVISION
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18 SUCCESSFACTORS, INC., a Delaware
corporation,

19 Plaintiff,

20 v.

21 SOFTSCAPE, INC., a Delaware
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22 Defendants.
23
24

Case No. CV 08-1376 CW

MANUAL FILING NOTICE

25 **RE: CONFIDENTIAL EXHIBITS C TO THE MOTION FOR ADMINISTRATIVE RELIEF**
26 **TO FILE MATERIALS RECENTLY PRODUCED BY GOOGLE, INC. PURSUANT TO**
27 **THE SUBPOENA PREVIOUSLY AUTHORIZED BY THE COURT; MOTION TO SEAL**
28

1 This filing is in paper or physical form only, and is being maintained in the case file in the
2 Clerk's office.

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4 For information on retrieving this filing directly from the court, please see the court's main
5 web site at <http://www.cand.uscourts.gov> under Frequently Asked Questions (FAQ).

6 This filing was not efiled for the following reason(s):

7 _____ Voluminous Document (PDF file size larger than efileing system allowances)

8 _____ Unable to Scan Documents

9 **X** _____ Physical Object (description): CD containing Confidential Exhibit C

10 _____ Non Graphical/Textual Computer File (audio, video, etc.) on CD or other media

11 _____ Item Under Seal

12 _____ Conformance with the Judicial Conference Privacy Policy (General Order 53).

13 _____ Other (description): _____

14
15 Dated: March 26, 2008

FENWICK & WEST LLP

16
17
18 By: /s/ **Liwen Mah**
19 Liwen Mah
20 Attorneys for Plaintiff SUCCESSFACTORS, INC.
21
22
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24
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FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

EXHIBIT D

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Location: Unknown

Looking up !NET-74-94-170-176-1 at whois.arin.net.

Using 0 day old cached answer (or, you can [get fresh results](#)).
Hiding E-mail address (you can [get results with the E-mail address](#)).

CustName: Courtyard Marriott
Address: 387 Winter St, New
City: Waltham
StateProv: MA
PostalCode: 02451
Country: US
RegDate: 2007-11-19
Updated: 2007-11-19

NetRange: 74.94.170.176 - 74.94.170.191
CIDR: 74.94.170.176/28
NetName: COURTYARD-MARRIOTT
NetHandle: NET-74-94-170-176-1
Parent: NET-74-94-128-0-1
NetType: Reassigned
Comment:
RegDate: 2007-11-19
Updated: 2007-11-19

RAbuseHandle: NAPO-ARIN
RAbuseName: Network Abuse and Policy Observance
RAbusePhone: +1-856-317-7272
RAbuseEmail: *****@comcast.net

OrgAbuseHandle: NAPO-ARIN
OrgAbuseName: Network Abuse and Policy Observance
OrgAbusePhone: +1-856-317-7272
OrgAbuseEmail: *****@comcast.net

OrgTechHandle: [IC161-ARIN](#)
OrgTechName: Comcast Cable Communications Inc
OrgTechPhone: +1-856-317-7200
OrgTechEmail: *****@cable.comcast.com

ARIN WHOIS database, last updated 2008-03-25 19:10
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